

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RENEE JENKINS,

Case No. 2:20-CV-653 JCM (DJA)

ORDER

V.

PRIME WASHINGTON, LLC, dba  
CORNERSTONE CROSSINGS  
APARTMENTS, et al.,

Defendant(s).

Presently before the court is plaintiff Renee Jenkins' motion to remand. (ECF No. 23). Defendants Prime Washington, LLC dba Cornerstone Crossings Apartments ("Prime Washington"), Prime Administration, LLC dba Prime Group ("Prime Group"), and Paulette Dearinger (collectively, "defendants") responded, (ECF No. 30), to which plaintiff replied, (ECF No. 33).

Also before the court is defendants' motion to dismiss. (ECF No. 6). Plaintiff responded, (ECF No. 17), to which defendants replied, (ECF No. 24).

## I. Background

The instant action arises from injuries caused by a couch thrown from a second story balcony. (ECF No. 3). Plaintiff sued defendants in the Eighth Judicial District Court in Clark County, Nevada. (*Id.*). Defendants then removed to this court on the basis of diversity jurisdiction, (ECF No. 1), and shortly thereafter, moved to dismiss the complaint, (ECF No. 6).

Plaintiff now moves to remand this matter to state court for lack of complete diversity.  
(ECF No. 23).

1       **II. Legal Standard**

2       “‘Federal courts are courts of limited jurisdiction,’ possessing ‘only that power  
 3       authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting  
 4       *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)). Pursuant to 28  
 5       U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the  
 6       United States have original jurisdiction, may be removed by the defendant or the defendants, to  
 7       the district court of the United States for the district and division embracing the place where such  
 8       action is pending.” 28 U.S.C. § 1441(a).

9       Because the court’s jurisdiction is limited by the constitution and 28 U.S.C. §§ 1331,  
 10      1332, “[t]he threshold requirement for removal under 28 U.S.C. § 1441 is a finding that the  
 11      complaint contains a cause of action that is within the original jurisdiction of the district  
 12      court.” *Ansley v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003) (quoting *Toumajian*  
 13      *v. Frailey*, 135 F.3d 648, 653 (9th Cir. 1998)). Thus, “it is to be presumed that a cause lies  
 14      outside the limited jurisdiction of the federal courts and the burden of establishing the contrary  
 15      rests upon the party asserting jurisdiction.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042  
 16      (9th Cir. 2009).

17       Upon notice of removability, a defendant has thirty days to remove a case to federal court  
 18      once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*  
 19      *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not  
 20      charged with notice of removability “until they’ve received a paper that gives them enough  
 21      information to remove.” *Id.* at 1251.

22       Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s  
 23      receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts  
 24      necessary for federal court jurisdiction.” *Id.* at 1250 (quoting *Harris v. Bankers Life & Casualty*  
 25      *Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day  
 26      clock doesn’t begin ticking until a defendant receives ‘a copy of an amended pleading, motion,  
 27      order or other paper’ from which it can determine that the case is removable.” *Id.* (quoting 28  
 28      U.S.C. § 1446(b)(3)).

1           A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C.  
 2 § 1447(c). On a motion to remand, the removing defendant must overcome the “strong  
 3 presumption against removal jurisdiction” and establish that removal is proper. *Hunter*, 582 F.3d  
 4 at 1042 (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992) (per curiam)). Due to this  
 5 strong presumption against removal jurisdiction, the court resolves all ambiguity in favor of  
 6 remand to state court. *Id.*

7           **III. Discussion**

8           Although defendant Pauletta Dearinger is a Nevada resident, defendants argue that she is  
 9 a sham defendant, “fraudulently joined solely for the purpose of defeating diversity.” (ECF No.  
 10 30). A non-diverse defendant is a “sham” if the plaintiff could not possibly recover against the  
 11 party whose joinder is questioned. *See Kruso v. Int'l Tel. & Tel. Corp.*, 872 F.2d 1416, 1426 (9th  
 12 Cir. 1989). In examining this question, all disputed questions of fact are resolved in the  
 13 plaintiff’s favor. *Id.* “If there is a *possibility* that a state court would find that the complaint  
 14 states a cause of action against any of the resident defendants, the federal court must find that the  
 15 joinder was proper and remand the case to the state court.” *Hunter v. Philip Morris USA*, 582  
 16 F.3d 1039, 1046 (9th Cir. 2009) (emphasis added).

17           Here, this court finds such possibility, especially in light of Nevada’s less stringent  
 18 “notice pleading” regime. *Hay v. Hay*, 678 P.2d 672, 674 (Nev. 1984) (“Nevada . . . courts  
 19 liberally construe pleadings to place into issue matters which are fairly noticed to the adverse  
 20 party.”). Construing all factual disputes in plaintiff’s favor, this court grants the instant motion  
 21 to remand.

22           In her complaint, plaintiff clearly explains why she has sued Dearinger: Dearinger  
 23 worked as a property manager at the time of the incident and plaintiff’s harms resulted from  
 24 Dearinger’s “acts and/or omissions on Prime Washington’s behalf, while she was acting in the  
 25 course and scope of her employment.” (ECF No. 3). Plaintiff explicitly alleges that Dearinger  
 26 not only served in a supervisory role but she also “failed to call 911.” (*Id.*). Defendants respond  
 27 at length on plaintiff’s claims, presenting facts in Dearinger’s declaration. (ECF No. 30).

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1 Plaintiff is correct that, at this stage, these allegations must be taken as true. *See Kruso*, F.2d at  
2 1426. The many factual disputes presented before this court are resolved in plaintiff's favor.

3 In determining this issue, this court must determine whether a state court could *possibly*  
4 find that plaintiff has sufficiently stated her claim. *See Kruso*, 872 F.2d at 1426. This court finds  
5 that Dearinger is not a sham defendant. There is no complete diversity, and this matter is hereby  
6 remanded.

7 In light of this matter's remand, this court denies defendants' motion to dismiss as moot.  
8 (ECF No. 6).

9 **IV. Conclusion**

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion to  
12 remand (ECF No. 23) be, and the same hereby is, GRANTED.

13 IT IS FURTHER ORDERED that defendants' motion to dismiss (ECF No. 6) be, and the  
14 same hereby is, DENIED as moot.

15 DATED August 24, 2020.

16   
17 UNITED STATES DISTRICT JUDGE

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